IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 282 of 2006

Date of Decision: 16.6.2007.

Rajesh Kumar … Petitioner.

Versus.

Union of India & anr. …. Respondents.

Coram:

The Hon'ble Mr. Justice Deepak Gupta, Acting Chief Justice

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

Whether approved for reporting?

For the Petitioner: Mr. Surinder Sharma, Advocate.

For the Respondents: Mr. Sandeep Sharma, Assistant Solicitor General of India.

Deepak Gupta, ACJ (Oral)

By means of this writ petition, the petitioner has prayed that the orders of the respondents refusing to grant compassionate appointment to him be set aside and the respondents be directed to grant compassionate appointment to him.

The facts shortly stated are that the petitioner's father was employed as Driver with the respondents. He expired on 11.9.1996. Thereafter, the mother of the petitioner filed an application that one post may be kept vacant for being filled up on compassionate grounds from amongst the family members of the deceased. The petitioner's mother was informed by the functionaries of the department vide letter dated 1.4.1997 that the Competent Authority has agreed to her request and that

the petitioner would be appointed on compassionate grounds on his attaining the age of 18 years.

The petitioner attained the age of 18 years on 26.7.2004. Immediately thereafter, the mother of the petitioner sent another communication dated 31.7.2004 to the respondents and prayed that her son be appointed. However, she was informed vide letter dated 18.8.2004 that the case of the petitioner was not covered under the new policy and her request was very belated. The petitioner thereafter sent legal notice and when the respondents did not give any fruitful result, the petitioner filed **CWP No.1126 of 2004.** This writ petition was disposed of by this Court on 7.12.2005. The operative portion of the order reads as follows:

> "In view of the above, the writ petition is disposed of with a direction to the respondents to consider the request of the petitioner for compassionate appointment in the light of Clause 8, which provides for entertaining the belated requests for compassionate appointment, by passing a speaking order. Respondents shall complete the exercise in this regard within four months from the date of receipt of copy of the order."

Thereafter the respondents considered the case of the petitioner in the light of Clause 8 and have again rejected his case. Hence, the present writ petition.

By now, it is well settled law that compassionate appointment is to be given only on the ground that there is no source of livelihood and the family is not in a position to make both ends meet. The object of compassionate employment is to enable the family to tide over the sudden crisis at the time of death. Compassionate appointment cannot be a substitute for regular appointment. Compassionate appointment cannot be made much after the stage of the crises. The apex Court in **Umesh Kumar Nagpal versus State of Haryana,** JT 1994 (3) SC 525, observed as follows:

> " As a rule, appointments in the public services should be made strictly on the basis of open invitation of applications and merit. No other mode of appointment nor any other consideration is permissible. Neither the Governments nor the public authorities are at liberty to follow any other procedure or re-tax the qualifications laid down by t he rules for the post. However, to this general rule which is to be followed strictly in every case, there are some exceptions carved out in the interest of justice and to meet certain contingencies. One such exception is in favour of the dependents of an employee dying in harness and leaving his family in penury and without any means of livelihood. In such cases, out of pure humanitarian consideration taking into consideration the fact that unless some source of livelihood is provided, the family would not be able to make both ends meet, a provision is made in the rules to provide gainful employment to one of the dependents of the deceased who may be eligible for such employment. The whole object of granting compassionate employment is thus to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post held by the deceased."

Keeping in view the aforesaid law, we are of the considered view that the case of the petitioner was not covered under the terms of the policy and has rightly been rejected. The writ petition, therefore, is without any merit and the same is accordingly dismissed with no order as to costs.

(Deepak Gupta), J.

June 16, 2007.. (V.K.Ahuja), J.

s.